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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

DONNY RAYMOND ESTRADA,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E071750

(Super.Ct.No. FSB19034)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Harold T. Wilson, Jr.,  
Judge. Petition granted.

Donny Raymond Estrada in pro. per. for Petitioner.

No appearance for Respondent.

Xavier Becerra, Attorney General, Kristen Kinnaird Chenelia, Deputy Attorney  
General, for Real Party in Interest.

Petitioner Donny Raymond Estrada challenges the superior court’s denial of his motion for postconviction discovery under Penal Code Section 1054.9.<sup>1</sup> Having read and considered the petition, the informal response, the further informal response, and Estrada’s replies, as well as the record provided by the parties, we conclude the petition should be granted. Our order requesting a further informal response notified real party in interest, the People, that a peremptory writ might issue unless it showed good cause to the contrary. All parties received “due notice” (Code Civ. Proc., § 1088), and “it appears that the petition and opposing papers on file adequately address the issues raised by the petition, that no factual dispute exists, and that the additional briefing that would follow issuance of an alternative writ is unnecessary to disposition of the petition.” (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.) In reliance on these rules, and because we agree that the issue posed by the petition is an important one warranting speedy resolution, we now resolve the petition by way of a formal written opinion granting relief. (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 414-417 [such procedure creates a “ ‘cause’ ” and the resulting opinion constitutes law of the case].)

Because Estrada has met the statutory requirements of section 1054.9 and interpreting case law, we grant the petition and issue the writ, directing the trial court to order the release of discovery materials “in the possession of the prosecution and law enforcement authorities to which [Estrada] would have been entitled at time of trial.” (§ 1054.9, subd. (c).)

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<sup>1</sup> Section references are to the Penal Code except where otherwise indicated.

## STATEMENT OF PROCEDURE

On February 16, 2000, the trial court sentenced Estrada to life in prison without the possibility of parole for committing two counts of murder and two counts of attempted murder, with accompanying firearm and great bodily injury enhancements.

### *First Motion in Superior Court.*

In early 2017, Estrada filed his first motion for discovery materials under section 1054.9 in the superior court. At some point in 2017, the court erroneously denied the motion on the ground that Estrada did not then have pending a writ petition or motion to vacate. (See *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523, 531.)

On July 7, 2017, Estrada filed a petition for writ of habeas corpus in the superior court claiming the superior court erred in denying his motion for discovery materials under section 1054.9. On September 19, 2017, the court *acknowledged that the trial court erred when it denied Estrada's first motion*, but denied Estrada's petition because his remedy was to petition for writ of mandate in the Court of Appeal.

### *Second Motion in Superior Court.*

On October 20, 2017, Estrada filed a second motion for discovery materials under section 1054.9, using the same case number as his denied petition for writ of habeas corpus. “ ‘An order denying a petition for writ of habeas corpus in the superior court is final immediately upon its filing, and review of the order can only be had by the filing of a new petition in the Court of Appeal. [Citation.]’ (*Jackson v. Superior Court* (2010) 189 Cal.App.4th 1051, 1065, fn. 5.)” On October 27, 2017, because the superior court

found it could not act on Estrada's second motion, it transferred the matter to department S-15 for hearing in the underlying case (case No. FSB19034-1), set for December 15, 2017.

Estrada's matter was called on December 15, 2017, and the public defender was appointed. The matter was called again on January 10, 2018, and “ ‘continued for the Court to rule on the Motion sent from Dpt S20 (originally received as Writ).’ ”

On January 30, 2018, the parties conferred off the record. The minute order provides, the “Court finds that the Public Defender's Office is already taking care of this issue,” and “Motion off calendar (moot issue at this time.)” The court never ruled on Estrada's second motion.

On January 28, 2018, Estrada mailed a “motion” to the superior court asking for the status of his second motion. At some point, he received the minute order of January 30, 2018.

#### *Further Inquiry and Proceedings.*

On April 9, 2018, Estrada yet again wrote to the superior court and requested that it rehear his motion for section 1054.9 discovery and issue an order on his petition for writ of habeas corpus. He explained that he had written to the public defender's office and Public Defender Sergio Salcedo to no avail and received no response. On April 16, 2018, the superior court issued an order reiterating that Estrada's original motion was denied, and the Court could not take action on it. The court denied Estrada's request for

a ruling on his habeas corpus petition and advised him to petition for writ of mandate in the Court of Appeal.

On May 31, 2018, Deputy Public Defender Sergio Salcedo wrote to Estrada confirming that he had sent Estrada all discovery that the public defender's office had in its possession. He suggested Estrada refile his section 1054.9 motion and attach the letter to establish Estrada had made good faith efforts to obtain discovery from trial counsel, as required by section 1054.9, subdivision (a).

*The Current Proceedings in Both Courts.*

On December 6, 2018, Estrada filed the current petition for writ of habeas corpus in this court asking to be provided with his section 1054.9 discovery materials and specifically identifying the "murder book." In the superior court, Estrada's motion for section 1054.9 discovery (case No. FSB19034-1) was placed on calendar for February 7, 2019. The parties conferred off the record, and the superior court continued the matter for the parties to locate additional discovery. A motion hearing was scheduled for March 14, 2019. On February 19, this court issued an order requesting the People to file an informal response. The People did so on March 8, 2019, citing the upcoming motion hearing in the superior court as a reason for this court to refrain from acting to grant Estrada relief on ripeness grounds. The motion hearing in the superior court was subsequently continued to May 24, 2019, "by stipulation." On March 20, 2019, Estrada filed his reply in this court, in which he argued the matter is far past the stage of ripeness

after more than two years of back-and-forth over access to discovery to which he is entitled by law.

On April 9, 2019, this court issued an order construing the petition as one for writ of mandate, invited the People to file a further informal response or stand on the informal response filed March 8, 2019, and notified the People that it may issue a peremptory writ unless good cause is shown. The People filed their further informal response on April 19, 2019.

### **DISCUSSION**

“Section 1054.9 allows inmates facing sentences of life or life without the possibility of parole who are prosecuting a writ of habeas corpus or a motion to vacate the judgment to demand the production of postconviction discovery. [Citation.] If such an inmate makes ‘a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful,’ the trial court ‘shall’ order that ‘discovery materials’ be made available to the inmate. [Citation.] In essence, ‘If [a] showing [that defendant sought discovery from his or her trial counsel, but unsuccessfully] is made, the defendant is entitled to discovery.’ [Citation.]

“In the context of a section 1054.9 request, ‘“discovery materials” means materials in the possession of the prosecution and law enforcement authorities to which the . . . defendant would have been entitled at time of trial.’ [Citation.] More specifically, an inmate who can show unsuccessful efforts to obtain items from trial counsel is entitled to receive discovery materials that ‘either (1) the prosecution did

provide at time of trial but have since become lost to the defendant; (2) the prosecution should have provided at time of trial because they came within the scope of a discovery order the trial court actually issued at that time, a statutory duty to provide discovery, or the constitutional duty to disclose exculpatory evidence; (3) the prosecution should have provided at time of trial because the defense specifically requested them at that time and was entitled to receive them; or (4) the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them.’ ” (*Davis v. Superior Court* (2016) 1 Cal.App.5th 881, 885-886.)

A motion under section 1054.9 may be made in anticipation of filing a petition for habeas corpus, but before the petition is actually filed. (*In re Steele* (2004) 32 Cal.4th 682, 691.) We review section 1054.9 rulings under the abuse of discretion standard. (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 366.)

Estrada meets the requirements set forth above for the superior court to order the discovery materials to be made available to him. He is an inmate facing life in prison. Estrada states he anticipates filing a petition for habeas corpus to challenge the conviction. As described above, he has made a good faith effort to obtain the discovery materials from the public defender’s office, but was unsuccessful. Therefore, under section 1054.9 and the case law cited above, he is legally entitled to the discovery materials. Further, he has filed this petition to enforce his legal rights to the discovery

materials. Hence, this court is required by law to direct the superior court to order that the discovery materials be made available to Estrada, and we do so.

#### **DISPOSITION**

Let a peremptory writ of mandate issue, directing the superior court to order the release of discovery materials “in the possession of the prosecution and law enforcement authorities to which [Estrada] would have been entitled at time of trial.” (§ 1054.9, subd. (c).)

Estrada is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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RAPHAEL  
J.

We concur:

CODRINGTON  
Acting P. J.

MENETREZ  
J.